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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Sections 97.505 and 97.509
of the Rules Governing the Administration
of Telegraphy Examinations in the Amateur
Radio Service

RM-9196

TO: The Commission

STATEMENT IN OPPOSITION BY THE
THE W5YI GROUP, INCORPORATED

We hereby submit this Statement in Opposition pursuant to Section 1.405 of the Commission's Rules (47 C.F.R. §1.405) in response to the *Petition for Rule Making* (the petition), filed by the American Radio Relay League (ARRL) on September 23, 1997. On November 26, 1997, the Commission assigned this petition file number RM-9196 and established a 30 day preliminary comment period. (*Public Notice Report #2239, mimeo 80614.*) Considering holidays, this public comment period ends on December 29, 1997. Therefore these comments are timely filed.

Qualifications of the Commenter

The W5YI Group, Inc., (W5YI), is the umbrella corporation which through its subsidiary W5YI-VEC, Inc¹, (a tax exempt educational organization under IRS 501-C3) and National Radio Examiners conducts amateur and commercial radio operator training, examinations and electronic filing of applications. Over the past thirteen years, our

¹ In 1984, our group was the first to be accepted by the FCC as a Volunteer Examiner Coordinator on a national basis. The ARRL/VEC is the largest VEC with an approximate 55% share. The W5YI-VEC handles about 35% of all amateur radio testing. The remaining fourteen VEC's are small and account for the remaining 10%.

organization has administered nearly 600,000 radio operator written and telegraphy examination elements to 350,000 examinees and authorized the Commission to issue over 200,000 amateur and commercial radio operator licenses. The W5YI Group is the only U.S. organization that oversees both amateur and commercial radio testing giving us wide experience and contact with both the hobby and professional radio operator community.

I , Frederick O. Maia, W5YI have been a licensed Amateur Radio operator for more than four decades and am a member of the *Quarter Century Wireless Association* - member No. 14730 - (25 years licensed), the *Old Old Timers Club* - member No. 3405 - (40 years licensed), the *Society of Wireless Pioneers* - *Life Member*- (ex-professional wireless telegrapher) and the *Radio Club of America* - *Member 1987, Fellow 1997* (the nation's oldest wireless "by invitation only" organization - formed in 1909.) W5YI was trained as a military radio operator in the 1950's. I am the author of hundreds of radio magazine articles, publish a twice-a-month communications-oriented newsletter and am co-author of the 492-page "*General Radiotelephone Operator Plus*" license manual which covers commercial radio operator examinations . I believe I am qualified to speak out on the subject of radio operator examinations.

The ARRL Petition:

The ARRL petition requests a provision in the Part 97 Rules which would further involve the *Volunteer Examiner Coordinator (VEC²) System*

²A VEC serves as the interface between the Federal Communications Commission (who issue the amateur radio licenses) and the Volunteer Examiners (who administer the written and telegraphy examinations.) Basically the VECs develop and provide license examination materials and instructions, accredit VEs, receive the exam session results from the VE teams and electronically file the FCC Form 610 license applications. The VEC System consists of approximately 30,000 accredited volunteer examiners who hold senior amateur

in telegraphy examinations administered to disabled amateur radio operator examinees. Specifically, the ARRL's petition wants to change the procedural requirements in Part 97 covering the way Morse code exam exemptions for severely handicapped applicants are handled prior to granting examination credit.

The League has proposed that a candidate would have to attempt the CW test -- with any and all necessary accommodations -- before being granted an exam waiver based on a physician's certification. Also, Volunteer Examiner Coordinators (VECs) would be required to request and review medical information pertinent to an applicant's handicap from the certifying physician and would be required to have this information on file before the application is forwarded to the FCC for processing.

In support of their petition, the League basically make four arguments. The ARRL (1) characterizes these two changes as minor which (2) would stem abuses of the higher speed telegraphy examination waiver system, (3) limiting its use only to severely handicapped individuals and (4) without putting an unreasonable burden on examinees or the VEC System. We take issue with all of these positions.

Telegraphy examinations for the disabled

Up until 1990, waivers of the Morse code speed requirement were not possible. With the help of King Hussein/JY1 of Jordan and President George Bush, however, Johnstown, Pennsylvania amateur Tom McMillen, WB3HGW obtained a dramatic reversal of FCC policy towards telegraphy examination exemptions for the handicapped. Effective July 1, 1990, amateurs with mental or physical handicaps would now qualify for a complete waiver of the 13 and 20 words-per-minute examination. Disabled applicants requiring five WPM would need only to identify

radio operator licenses and sixteen volunteer examiner coordinators.

certain sentences, phrases or even individual characters ...or a sending exam could be substituted.

McMillen, a Technician Class licensee for the past 15 years, had epilepsy, was paralyzed and confined to a wheelchair. Though he was an active DXer, WB3HGW was unable to achieve his goal of upgrading to General Class. According to his doctor, McMillen's disability and the effects of medication prevented him from raising his Morse code speed to the required 13 wpm, even after extended study and practice. In light of his difficulty, he asked the FCC in 1989 to waive the code exam.

The Commission declined McMillen's request, in keeping with its long-time policy that the requirements for amateur licensees are the same for everyone. Volunteer examiners had some flexibility to modify their procedures to meet special needs, but the code exams had to be passed.

McMillen did not feel that these limited adjustments would be worthwhile. "For an epileptic, it doesn't matter how the code is given," he said. "There may be epileptics who have passed 20 wpm. But it doesn't affect everyone the same. It is affected by the speed that the brain will process the information, and where the damage to the brain is." He supplied the FCC with a letter from his physician documenting his disability. The FCC again denied his request and referred the matter to the American Radio Relay League who suggested to McMillen in a letter that he should contact Handi-Hams, a Minnesota-based organization which assists disabled amateurs.

Instead, McMillen wrote about his situation to Jordan's King Hussein, an amateur radio operator who holds the JY1 amateur station call sign recognized around the world. A Jordanian official replied sympathetically, and wrote that the king had contacted President George Bush to request intervention on McMillen's behalf.

President Bush then referred Hussein's letter to the State

Department, where officials responsible for Jordanian affairs reviewed the case together with members of the National Security Council staff. In February 1990, King Hussein himself wrote to WB3HGW, stating that Bush had replied that the government would try to help McMillen and others with similar disabilities.

The top leadership at the FCC were contacted by the Bush administration and instructed to change the policy. On June 13, 1990, McMillen received a phone call from the FCC to tell him that his request for waiver of the 13 wpm code exam had been granted. A letter of confirmation arrived soon thereafter.

VEC's advised to change Morse code policy

On June 15, 1990, the Volunteer Examiner Coordinators met with the FCC in Gettysburg, Pennsylvania at their annual conference. Personal Radio Branch chief, John B. Johnston, W3BE announced the grant of a waiver to McMillen. He also said that another three persons had filed discrimination complaints under disability and rehabilitation legislation.

The VEC's were instructed in the future to "...make additional accommodations for handicapped examinees who have a special problem in proving that they have mastered the required code speed and where it is warranted, handicapped examinees should be able to take the 5 words-per-minute telegraphy examination one sentence, or one phrase, or one word, or even one character at a time. Where it is warranted, a sending test should be substituted for the receiving test." The one-character-at-a-time meant that no particular speeds would be required which is legal under the law.³

³The International Radio Regulations as revised at the World Administrative Radio Conference, Geneva, 1979 require that licensed amateur radio operators must prove that they are able to manually send and receive Morse code communications. There are no further conditions and a speed requirement is not specified. Under international radio law, just the recognition of Morse

Furthermore, Johnston said "The Private Radio Bureau will grant a waiver of Element 1B (13 wpm telegraphy) or 1C (20 wpm) whenever:

- (1) The examinee now holds at least a Novice Class operator license, and
- (2) The examinee requests a waiver of Section §97.511 for Element 1(B) or 1(C), and
- (3) The examinee submits a physician's certificate stating that, due to a severe handicap under the 1988 Developmental Disabilities Act, the examinee is unable to meet the 13 or 20 WPM requirement."

At first, the procedure was that the applicant would request a waiver. Later, the FCC initiated a rule making proceeding to implement the new policy directly into the (Section §97.505, Element credit) rules. The new rule provided for receiving credit for the 20 WPM telegraphy element credit when an applicant presents a FCC Form 610 to the VE team containing a physician's⁴ certification stating that "...because the person is an individual with a severe handicap, the duration of which will extend for more than 365 days beyond the date of certification, the person is unable to pass a 13 or 20 words per minute telegraphy examination."

A medical records release signed by the applicant permitted the disclosure to the FCC of medical information pertaining to the person's handicap. Section §97.509 provides that "The administering VEs may require a physician's certification indicating the nature of the disability before determining which, if any, special procedures must

characters meets the requirement. The FCC does not require a sending examination since it has been their experience that if an examinee can receive Morse code, they also can send it.

⁴A doctor is defined as a medical doctor (M.D. or a doctor of osteopathy, (D.O.)

be used."⁵

VEs and VECs are not doctors

Effective July 1, 1990, all VECs began implementing the new medical handicap rules. The VECs were told by the FCC "You can check to make sure that the physician actually exists, or that the physician actually issued the certificate. But you must not engage in disputing the physician's certification that, due to the person's severe handicap, the person cannot meet the telegraphy speed requirements."

While the number of requests for telegraphy waivers has been increasing in recent years, we believe that the greater majority of Morse code waivers are legitimate. Some of our VE teams believe, however, that several may be fraudulent.

There is also a controversy as to exactly what constitutes a severe handicap preventing a person from passing a code test. Both the medical profession and the amateur community seem to have their own definition of a disabling handicap. It has been our experience that many individuals with major disabilities are indeed able to pass the examination - and many with what appears to be extremely minor impairments cannot. The simple fact is that any medical, mental, learning or psychological disorder which deviates from the norm can have an adverse impact on a telegraphy examination.

Many amateur radio operators - many of whom are also VEs - do not like the telegraphy waiver procedure since they believe it is unfair to those who had to pass the Morse code exam in a normal way. They believe that everyone else should have to "pay the price" also.

⁵The rule which permits administering VE teams (not the VEC) to require a "certification indicating the nature of the disability" is for determining how the examinee may be accommodated. Only the FCC may request medical records under the "patient's release" section of the Form 610. I am not aware that this option has ever been exercised by the Commission.

To obtain the telegraphy high speed waiver, the VE is presented with the application Form 610 certifying (on the back) that the doctor has read the "Notice to Physician" and that their patient is "...severely handicapped." The VEC accepts the doctor's certification and awards the examinee with credit for 20 words-per-minute code.

Frankly, my personal view, is that only people who will use the code should have to be examined - and maybe not even then since only those who are proficient will use the mode. But that is not the international (nor the FCC) rules when the applicant operates on amateur frequencies below 30 MHZ.

Code exemptions discussed at 1997 VEC Conference

The telegraphy waiver situation was discussed at our National VEC Conference held this past July 1997. The topic was brought up since the ARRL Executive Committee had adopted a position earlier in the year (later confirmed by its Board) precluding VEs who had not passed a regular code exam from administering code examinations to others.⁶

The League also wanted the rules changed to require "disabled" examinees to attempt to pass a code test in some manner and VECs would be authorized and required to request and review medical information from the doctor. A question was, what were the VECs going to do with it once - and if - we got the information.

I led that discussion topic and the entire situation was "tabled" without action. The consensus I ascertained was that the examining community does not want to sit in judgement of a doctor's decision as to the extent or degree of a person's handicap and that the VE/VEC community is uncomfortable in getting further involved with an applicant's medical history. Even a severe learning disability qualifies

⁶My view on this is that anyone, code proficient or not, is able to check an applicant's answer sheet against the text provided by the VEC. This ARRL/VEC position may discriminate against handicapped amateurs.

for a code waiver.

VECs are not medically qualified

There was also discussion at the 1997 VEC Conference that contacting a busy doctor and getting them to respond was a very time consuming situation which would greatly slow down our work. Doctors (if you are able to reach them - nearly impossible during business staff hours since they are seeing patients) really do not approve of non-medical "outsiders" questioning their judgement. It thus appears that the objective of the ARRL proposal is not to reduce telegraphy examination abuse, but to eliminate telegraphy waivers to the handicapped entirely.

While the procedures suggested by ARRL would lead to fewer waivers ...it would also lead to more legal problems involving the disabled since the new procedure would single out handicapped applicants. The Americans with Disabilities Act⁷ prohibits discrimination to the disabled in the administration of examinations which lead to licensing (Section 36.309) provided by private entities.

We question the advisability of VECs requiring the submission of additional medical history from an examinee's doctor who has already certified that the applicant has a handicap which precludes him/her from passing a telegraphy examination. The petition further requires the VEC to "review" the medical information before processing the application for an amateur license. Coordinators in the VEC System are not qualified to interpret this information once received. Once the VECs obtain additional supporting medical information, then the license application can be processed.

As I see it, since so many impairments can legitimately qualify

⁷(Public Law 101-336, also referred to as the "ADA") was signed into law on July 26, 1990 by President George Bush.

as a handicap, the ultimate result will be that persistent amateurs and cooperating doctors will be able to comply with the ARRL's requested handling and obtain a waiver. The procedure would not limit waivers only to severely handicapped.

It is clear that the primary purpose of requiring additional medical data is to greatly reduce or eliminate the number of examinees obtaining a telegraphy waiver. While this procedure may be appropriate for those who would abuse the system⁸, it discriminates against the overwhelming majority of applicants seeking telegraphy exemptions who are legitimately handicapped in some way and invades their right to privacy. A patient has a right to keep personal medical information confidential.

The importance of telegraphy in the Amateur Service

There can be no doubt that an unfair, inequitable situation exists where an applicant makes the sacrifice to learn the code while many others go the "easy exemption route." The real problem is differentiating between the two.

This brings us to the question of just how important is manual telegraphy in the Amateur Service for anyone. Amateur Radio is a communications hobby based upon internationally designated frequencies. Licenses to operate on these frequencies are available only to technically qualified individuals for the purpose of self-training, hobby and public service communications and technical investigation.

There are many communications emissions available to the radio-amateur and manual CW is just another one which certainly deserves no special priority. The VE/VEC examination process does not require a

⁸It is nearly an impossibility for anyone to determine if a disorder negatively impacts a telegraphy examination. Furthermore, our experience has been that the greater majority of the public do indeed have permanent ailments which could qualify them for a telegraphy waiver.

practical demonstration in the ability to use any other mode - even though more than a thousand modes and emissions are available to the Amateur Service.

The international law requires unspecified proficiency in the International Morse code when the operation takes place in the medium or high frequency bands. Because of technological advances, this regulation is now inconsistent with the goals of the Amateur Service since it provides a barrier to otherwise qualified individuals who wish to experiment and communicate below 30 MHz. There can be no doubt that the Morse code proficiency requirements have constituted an unnecessary and artificial impediment to fuller use of the Amateur Radio Service for many potential and existing amateurs.

The fact that the overwhelming majority of (no-code) Technician amateurs are not upgrading to license classes that require telegraphy suggests that the Morse code requirement is a significant barrier. The number of Amateurs holding license classes which require manual telegraphy skills is declining while the amount of participants holding the code-less class has been increasing dramatically. Many people question why an individual with vast knowledge in the electronics field should be excluded from operating on HF spectrum due to a personal disinterest in the Morse code.

While some amateurs may view the diminishing growth rate at the required telegraphy levels with satisfaction (since it tends to reduce the amount of congestion to their HF signals), the effect of this decline is more pressure from other services (such as short wave broadcasting) to reallocate Amateur Service spectrum to their expanding use.

The requirement that amateur radio operators be qualified in Morse code signals has its roots in maritime radio and the need to enhance safety of life at sea. Today, maritime radio has, for all practical purposes, already discontinued manual telegraphy as the

primary distress communications mode for ocean-going vessels.

It makes no sense to require high speed telegraphy on the HF amateur bands for anyone when the greater majority of participants do not desire to use that mode and there is no reason for them to do so. The future of Amateur Radio lies with trunking, computers, satellites and automatic digital communications systems not with slow, manual telegraphy.

It is interesting to note that sea-going radio officers also want to retain the radio telegraphy requirement just as do radioamateurs who have already passed the Morse code requirements. While understandable, the belief that others should be code proficient because you were required to be is shortsighted in a service whose cornerstone is contributing to the radio art.

Rather than have the controversy caused by awarding waivers of the high speed telegraphy requirement to handicapped amateurs - a few of which may be undeserved - a better approach would be to reduce the telegraphy speed for everyone to 5 words-per-minute and eliminate it entirely when international law permits.

Conclusions:

The requirement that the VEC System go through the unnecessary motions of "accommodating" a handicapped amateur and requiring additional medical data from busy doctors are not minor changes. They are a waste of the VE/VECs and the doctors valuable time. The end result will be huge delays in obtaining upgraded Amateur Radio licenses for disabled individuals.

We do not believe that requiring additional information from the doctors of examinees will reduce abuses. Medical, mental and learning disabilities that constitutes an impediment to the passing of a 13 or 20 wpm code exam is largely whatever a patient or doctor thinks it to

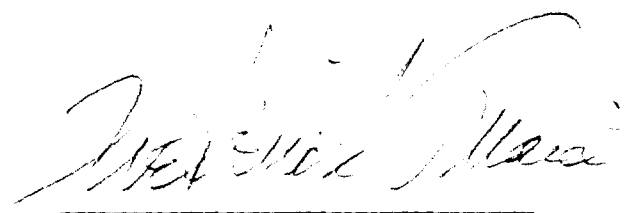
be. There will always be a few that will try to beat the system.

Furthermore, the ARRL proposal is an unreasonable burden on everyone, the applicant, the medical profession and the VEC System. I suggest that the FCC not go forward with RM-9196. Instead, it should look into ways - such as reducing the internationally required telegraphy speed in the Amateur Service to an absolute minimum for everyone.

Respectfully submitted,
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December 19, 1997



Frederick O. Maia, W5YI
President

CERTIFICATE OF SERVICE:

On December 19, I mailed this document (described as a Statement of Opposition to RM-9196) to ARRL General Counsel Christopher D. Imlay, of the Law Firm of BOOTH, FRERET, IMLAY & TEPPER, P.C., 5101 Wisconsin Avenue, N.W. Suite 307, Washington, DC 20016 as required by Section §1.47 and §1.405 of the Commission's Rules (47 C.F.R. §1.47, 47 C.F.R. §1.405)



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